

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

11 JOSE IGNACIO JAQUEZ-NEJEDA,

Petitioner:

13 UNITED STATES OF AMERICA.

Respondent.

CASE NO. 11-CV-2598-LAB

**ORDER DENYING 28 U.S.C.
§ 2255 HABEAS MOTION**

16 Jaquez-Nejeda is currently serving a 40-month sentence for being a deported alien
17 found in the United States, a violation of 8 U.S.C. § 1326. Now before the Court is his
18 habeas petition brought pursuant to 28 U.S.C. § 2255, through which he seeks a sentence
19 reduction. He seeks the reduction on the ground that, due to his alien status, he is ineligible
20 for a one-year sentence reduction through a drug program, or early release into a halfway
21 house. He argues that deprivation of these benefits or privileges due to his alien status
22 violates his Fifth and Fourteenth Amendment rights to due process and equal protection.
23 This is a familiar claim that aliens make in federal habeas petitions, using what appears to
24 be a form pleading, and the Court has consistently rejected it.

25 To state an equal protection claim, a plaintiff must allege he was treated differently
26 from other similarly situated persons, see *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S.
27 432, 439 (1985), and deportable aliens are not "similarly situated" to United States citizens.
28 It is not an equal protection violation to allow United States citizen-inmates, who must re-

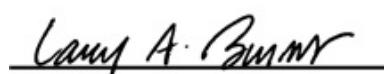
1 enter domestic society, to participate in rehabilitative or other programs while denying that
 2 privilege to deportable inmates. See, e.g., *Santos v. United States*, 940 F.Supp. 275, 281
 3 (D. Hawaii 1996) (one's status as deportable alien, which may result in ineligibility for less
 4 restrictive terms of confinement, cannot justify downward departure; plaintiff failed to state
 5 an equal protection claim "because deportable aliens are not 'similarly situated' to United
 6 States citizens"). The Supreme Court "has firmly and repeatedly endorsed the proposition
 7 that Congress may make rules as to aliens that would be unacceptable if applied to citizens."
 8 *Demore v. Kim*, 538 U.S. 510, 521-22 (2003).

9 This Court has previously rejected the claim that an alien's ineligibility for various
 10 prisoner programs or benefits violates that person's rights. See *Rendon-Inzunza v. United*
 11 *States*, 2010 WL 3076271 (S.D. Cal. 2010); *Lizarraga-Lopez v. United States*, 89 F.Supp.2d
 12 1166 (S.D. Cal. 2000). Those holdings stand. The purpose of halfway houses is to
 13 facilitate the reintegration of prisoners into the community, but prisoners in Jaquez-Nejeda's
 14 position are released first to the Attorney General and then to a foreign community.
 15 Moreover, halfway houses are still custodial institutions wherein prisoners serve out their full
 16 sentences, and from which deportable aliens would be a unique flight risk.

17 No due process or equal protection issue arises merely because a defendant's alien
 18 status excludes him from certain programs available to citizens, within the prison system or
 19 without. Accordingly, Jaquez-Nejeda's argument that the Court should consider his request
 20 for an additional downward departure on that basis is rejected. His habeas petition is
 21 accordingly **DENIED**. The Court also **DENIES** him a certificate of appealability. See 28
 22 U.S.C. § 2253(c)(2).

23 **IT IS SO ORDERED.**

24 DATED: December 14, 2011

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26 **HONORABLE LARRY ALAN BURNS**
 27 United States District Judge